

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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WILLIAM E. WARD, JR.,  
Petitioner,

v.

9:03-CV-0270  
(LEK)(DRH)

J. SMITH, Superintendent,  
Respondent.

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APPEARANCES:

OF COUNSEL:

WILLIAM E. WARD, JR.  
Petitioner, *pro se*

HON. ELIOT SPITZER  
New York State Attorney General  
Attorney for Respondent

MARIA MORAN, Esq.  
Assistant Attorney General

LAWRENCE E. KAHN, U.S. District Judge

**ORDER**

Petitioner William E. Ward, Jr. ("petitioner") filed a petition for a writ of habeas corpus with the Court on March 6, 2003. Dkt. No. 1. Because his prior petitions were found by the Court to be deficient, see Dkt. Nos. 8 and 12, petitioner filed an amended petition on June 2, 2003. Dkt. No. 13. The amended petition was recommended for denial and dismissal by the Report-Recommendation and Order of Magistrate Judge David R. Homer, which was filed on April 27, 2005. Dkt. No. 41. That Report-Recommendation was adopted, and the petition dismissed, by Order of this Court filed on September 26, 2005. Dkt. No. 44. Presently before the Court is a motion for a Certificate of Appealability ("COA") filed by the petitioner. Dkt. No. 47. Respondent opposes the motion for a Certificate of Appealability. Dkt. No. 48.

Section 2253(c)(1) of Title 28 of the United States Code provides, in pertinent part, that

[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

28 U.S.C. § 2253(c)(1).<sup>1</sup>

Furthermore, the Court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

After reviewing the relevant portions of the file, and for the reasons set forth in Magistrate Judge Homer’s Report-Recommendation and this Court’s September 26, 2005 Order, the Court finds that the petitioner has failed to make the required showing.

**WHEREFORE**, it is hereby

**ORDERED**, that petitioner’s motion for a Certificate of Appealability (Dkt. No. 47) is **DENIED**; and it is further

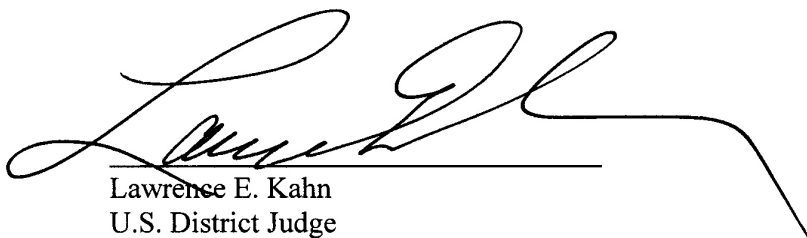
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<sup>1</sup> Likewise, Rule 22 of the Federal Rules of Appellate Procedure provides, in pertinent part, that “[i]n a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” FED. R. APP. P. 22(b)(1).

**ORDERED**, that the Clerk of the Court serve a copy of this Order upon the parties.

**IT IS SO ORDERED.**

DATED: November 15, 2005  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge